

85th Legislative Session – 2010

Committee: House Judiciary

Wednesday, March 03, 2010

P - Present
E - Excused
A - Absent

Roll Call

P Engels
P Feinstein
P Gibson
P Gosch
P Hamiel
P Hoffman
P Killer
P Lust
P Moser
P Schlekeway
P Turbiville
P Hunt, Vice-Chair
P Cutler, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Chair Joni Cutler.

MOTION: TO APPROVE THE MINUTES OF MONDAY, MARCH 1, 2010.

Moved by: Turbiville
Second by: Gosch
Action: Prevailed by voice vote.

SB 12: provide for a tiered sex offender registry and to establish certain criteria for eligibility to petition for removal or reassignment.

* Prior Testimony taken on Monday, March 1, 2010.

MOTION: AMEND SB 12

12rq

On page 2, line 8, after ":", insert "or".

On page 2, delete lines 9 to 11, inclusive, and insert:

"

- (d) An out-of-state, federal or court martial offense that is comparable to the elements of the crimes listed in (a) ~~or~~, (b), or c;"

On page 5, after line 24 of the Senate Judiciary Committee engrossed bill, insert:

"

Section 9. That § 22-24B-1 be amended to read as follows:

22-24B-1. For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

- (1) Rape as set forth in § 22-22-1;
- (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult;
- (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- (4) Incest if committed by an adult;
- (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-24A-3;
- (6) Sale of child pornography as set forth in § 22-24A-1;
- (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- (11) Felony indecent exposure as previously set forth in former § 22-24-1 or felony indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in § 22-24A-5;
- (13) Felony indecent exposure as set forth in § 22-24-1.3;
- (14) Bestiality as set forth in § 22-22-42;
- (15) An attempt to commit any of the crimes listed in this section;
- (16) Any crime committed in a place other than this state which would constitute a sex crime under this section if committed in this state;
- (17) Any federal crime or court martial offense that would constitute a sex crime under federal law;
- (18) Any crime committed in another state if that state also requires that anyone convicted of that crime register as a sex offender in that state; or
- (19) If the victim is a minor:

- (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;
- (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
- (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31."

Proponents: Ryan Kolbeck, SD Assn. of Criminal Defense Lawyers
Eileen Thomas, Self, Belle Fourche

Opponents: Charlie McGuigan, Office of the Attorney General

Moved by: Gibson
Second by: Engels
Action: Prevailed by voice vote.

MOTION: AMEND SB 12

12rp

On page 5, after line 24 of the Senate Judiciary Committee engrossed bill, insert:

"

Section 8. That § 22-24B-2 be amended to read as follows:

22-24B-2. Any person who has been convicted for commission of a sex crime, as defined in § 22-24B-1, shall register as a sex offender. The term, convicted, includes a verdict or plea of guilty, a plea of nolo contendere, and a suspended imposition of sentence which has not been discharged pursuant to § 23A-27-14 prior to July 1, 1995. Any juvenile ~~fifteen~~ fourteen years or older shall register as a sex offender if that juvenile has been adjudicated of ~~a sex crime rape~~ as defined in ~~§ 22-22-7.2, subdivision 22-24B-1(1), or 22-24B-1(9)~~; or of an out-of-state or federal offense that is comparable to the elements of these ~~three sex crimes of rape~~ or any crime committed in another state if the state also requires a juvenile adjudicated of that crime to register as a sex offender in that state. The term, adjudicated, includes a court's finding of delinquency, an admission, and a suspended adjudication of delinquency which has not been discharged pursuant to § 26-8C-4 prior to July 1, 2009. The sex offender shall register within five days of coming into any county to reside, temporarily domicile, attend school, attend postsecondary education classes, or work. Registration shall be with the chief of police of the municipality in which the sex offender resides, temporarily domiciles, attends school, attends postsecondary education classes, or works, or, if no chief of police exists, then with the sheriff of the county. If the sex offender is not otherwise registered in the state, the sex offender shall register within five days of coming into any county when the sex offender applies for or receives a South Dakota driver license, registers a motor vehicle, establishes a postal address, or registers to vote. A violation of this section is a Class 6 felony. Any person whose sentence is discharged under § 23A-27-14 after July 1, 1995, shall forward a certified copy of such

formal discharge by certified mail to the Division of Criminal Investigation and to local law enforcement where the person is then registered under this section. Upon receipt of such notice, the person shall be removed from the sex offender registry open to public inspection and shall be relieved of further registration requirements under this section. Any juvenile whose suspended adjudication is discharged under § 26-8C-4 after July 1, 2009, shall forward a certified copy of the formal discharge by certified mail to the Division of Criminal Investigation and to local law enforcement where the juvenile is then registered under this section. Upon receipt of the notice, the juvenile shall be removed from the sex offender registry open to public inspection and shall be relieved of further registration requirements under this section."

Proponents: Charlie McGuigan, Office of the Attorney General

Moved by: Gibson

Second by: Feinstein

Action: Prevailed by voice vote.

MOTION: AMEND SB 12

12rr

On page 3, line 17, after ";" insert "or

- (d) Statutory rape under subdivision 22-22-1(5), or an attempt to commit statutory rape under subdivision 22-22-1(5), but only if the petitioner was twenty-two years of age but not more than twenty-five years of age at the time the offense was committed or attempted; or
- (e) Sexual contact under § 22-22-7 if the victim was between the ages of thirteen and sixteen and the petitioner was at least three years older than the victim, but only if the petitioner was twenty-two years of age but not more than twenty-five years of age at the time the offense was committed;".

Proponents: Ryan Kolbeck, SD Assn. of Criminal Defense Lawyers

Opponents: Charlie McGuigan, Office of the Attorney General

Moved by: Gibson

Second by: Feinstein

Action: Prevailed by voice vote.

MOTION: DO PASS SB 12 AS AMENDED

Moved by: Gibson
Second by: Feinstein
Action: Prevailed by roll call vote. (11-1-1-0)

Voting Yes: Engels, Feinstein, Gibson, Gosch, Hamiel, Hoffman, Lust, Moser, Schlekeway, Turbiville, Hunt

Voting No: Cutler

Excused: Killer

SB 42: restrict the licensure and prohibit the employment of certain persons, including persons on the sex offender registry, in certain child welfare agencies or family day care centers.

Presented by: Dan Todd, Department of Social Services
Proponents: Greg Boris, South Dakota Voices for Children

MOTION: DO PASS SB 42

Moved by: Schlekeway
Second by: Gosch
Action: Prevailed by roll call vote. (12-0-1-0)

Voting Yes: Engels, Feinstein, Gibson, Gosch, Hamiel, Hoffman, Lust, Moser, Schlekeway, Turbiville, Hunt, Cutler

Excused: Killer

MOTION: PLACE SB 42 ON CONSENT CALENDAR

Moved by: Hoffman
Second by: Gosch
Action: Prevailed by voice vote.

SB 156: require that determinations in both adult and juvenile court proceedings relative to a controlled substance violation of a high school student participating in extracurricular activities be reported to the South Dakota High School Activities Association and to the school administrator.

Presented by: Representative Todd Schlekeway
Proponents: Lindsey Riter-Rapp, SD High School Activities Association

Greg Sattizahn, Unified Judicial System

MOTION: DO PASS SB 156

Moved by: Hoffman
Second by: Hamiel
Action: Prevailed by roll call vote. (13-0-0-0)

Voting Yes: Engels, Feinstein, Gibson, Gosch, Hamiel, Hoffman, Killer, Lust, Moser,
Schlekeway, Turbiville, Hunt, Cutler

MOTION: PLACE SB 156 ON CONSENT CALENDAR

Moved by: Turbiville
Second by: Gibson
Action: Failed by voice vote.

MOTION: ADJOURN

Moved by: Gibson
Second by: Hoffman
Action: Prevailed by voice vote.

Linda Daugaard
Committee Secretary

Joni M. Cutler, Chair